



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
FREEDOM OF INFORMATION ACT BRANCH
Washington, D.C. 20570

Via email

June 13, 2022

Re: FOIA Request NLRB-2022-001173

Dear Kim Terrell (Littler Mendelson, P.C.):

This is in response to your request, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, received on May 13, 2022, in which you seek a copy of the appeal “and all documents related to the appeal” filed in *Allied Services LLC d/b/a Allied Waste Services of Jefferson City*, Case No. 14-CA-289931.

We acknowledged your request on May 13, 2022. We have confirmed that you are Counsel for the Employer.

After conducting a search of the Agency’s electronic casehandling system, NxGen, I have determined that records responsive to your request are part of the investigative file in a currently open case before the Agency’s Office of Appeals, and thus are exempt from disclosure pursuant to FOIA Exemption 7(A). 5 U.S.C. § 552(b)(7)(A). Exemption 7(A) allows an agency to withhold records included in an open investigatory file where disclosure could reasonably be expected to interfere with a pending enforcement proceeding. *See NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 236 (1978).

However, in accordance with the General Counsel’s longstanding policy of providing copies of the appeal to the parties in response to a FOIA request, I am releasing to you a copy of the Charging Party’s notice of appeal and four-page appeal position statement submitted in the requested case. There were no attachments or exhibits to the appeal. The portion of your request seeking “all other documents related to the appeal” is denied, because any related investigatory records that may be in the file are protected from disclosure at this time, since disclosure of such records could harm or interfere with the open proceeding.

We have placed you in Category A, commercial use requester. This category refers to requests “from or on behalf of a person who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made, which can include furthering those interests through litigation.” NLRB Rules and Regulations, 29 C.F.R.

§ 102.117(d)(1)(v). Consistent with this fee category, you may “be assessed charges to recover the full direct costs of searching for, reviewing for release, and duplicating the records sought.” 29 C.F.R. § 102.117(d)(2)(ii)(A). Charges are \$9.25 per quarter hour of professional time. 29 C.F.R. § 102.117(d)(2)(i).

However, as a matter of our administrative discretion, the Agency is voluntarily providing the requested records to you at no cost. This voluntary disclosure is non-precedential.

You may contact Patrick Plummer, the Attorney-Advisor who processed your request, at 202-273-2999 or by email at patrick.plummer@nrlb.gov, as well as the Agency’s FOIA Public Liaison, for any further assistance and/or to discuss any aspect of your request. The FOIA Public Liaison, in addition to the Attorney-Advisor, can further explain responsive and releasable agency records, suggest agency offices that may have responsive records, and/or discuss how to narrow the scope of a request in order to minimize fees and processing times. The contact information for the Agency’s FOIA Public Liaison is:

Kristine M. Minami
FOIA Public Liaison
National Labor Relations Board
1015 Half Street, S.E., 4th Floor
Washington, D.C. 20570
Email: FOIAPublicLiaison@nrlb.gov
Telephone: (202) 273-0902
Fax: (202) 273-FOIA (3642)

After first contacting the Agency, you may additionally contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA dispute resolution services it offers. The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, Maryland 20740-6001
Email: ogis@nara.gov
Telephone: (202) 741-5770
Toll free: (877) 684-6448
Fax: (202) 741-5769

You may obtain a review of this determination under the NLRB Rules and Regulations, 29 C.F.R. § 102.117(c)(2)(v), by filing an administrative appeal with the Division of Legal Counsel (DLC) through FOIAonline at: <https://foiaonline.gov/foiaonline/action/public/home> or by mail or email at:

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Nancy E. Kessler Platt
Chief FOIA Officer
National Labor Relations Board
1015 Half Street, S.E., 4th Floor
Washington, D.C. 20570
Email: DLCFOIAAppeal@nrlrb.gov

Any appeal must be postmarked or electronically submitted within 90 calendar days of the date of this letter. Any appeal should contain a complete statement of the reasons upon which it is based.

Please be advised that contacting any Agency official (including the Attorney-Advisor, FOIA Officer, or the FOIA Public Liaison) and/or OGIS does not stop the 90-day appeal clock and is not an alternative or substitute for filing an administrative appeal.

Sincerely,

/s/ Synta E. Keeling

Synta E. Keeling
FOIA Officer

Attachment: (five pages)